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SONY MUSIC ENTERTAINMENT,
erroneously sued as SONY MUSIC HOLDINGS,
INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

STEVEN AMES BROWN,

Plaintiff,

v.

ANDREW B. STROUD, an individual, et al.

Defendant,

And related Cross and Counterclaims.METHVEN & ASSOCIATES PROFESSIONAL
CORPORATION

v.

SCARLETT PARADIES-STROUD as
administrator of the ESTATE OF ANDREW
B. STROUD; ANDY STROUD, INC.;
STROUD PRODUCTIONS AND
ENTERPRISES, INC., LISA SIMONE
KELLY as administrator of the ESTATE OF
NINA SIMONE; WALLY ROKER d/b/a ICU
ENT. DIST. d/b/a WALLY ROKER MUSIC;
STEVEN AMES BROWN; CASTLE ROCK
ENTERTAINMENT; WARNER BROS.
ENTERTAINMENT, INC.; WARNER BROS.
INDEPENDENT PICTURES; SONY MUSIC
ENTERTAINMENT, INC.,

Defendants in Interpleader,

And related Cross-claims.

Case No.: CV 08-02348 JSW

**SONY MUSIC ENTERTAINMENT'S
ADMINISTRATIVE MOTION TO
FILE CERTAIN PORTIONS OF ITS
COUNTERCLAIM AND
CROSSCLAIMS UNDER SEAL**

Date action filed: May 7, 2008
Trial Date: None

Case No.: C 13-01079 JSW

Date action filed: March 8, 2013
Trial Date: None

Pursuant to Northern District of California Civil Local Rules 79-5(d) and 7-11, defendant, reply-counter-defendant, counterclaimant, and crossclaimant Sony Music Entertainment ("Sony Music"), erroneously sued herein as Sony Music Entertainment, Inc., hereby moves the Court to issue an administrative order that orders sealing of certain paragraphs, portions of paragraphs, and an exhibit attached to Sony Music's counterclaim and crossclaim in *Brown v. Stroud*, 3:08-cv-02348-JSW (N.D. Cal. 2008) (the "*Brown v. Stroud* Action") and its crossclaim in *Methven & Assocs. Profl Corp. v. Scarlett Paradies-Stroud as administrator of the Estate of Andrew B. Stroud, et al.*, 13-01079 JSW (N.D. Cal. 2013) (the "*Methven* Interpleader Action"). Specifically, Sony Music requests that the Court seal:

Counterclaim and Crossclaim in <i>Brown v. Stroud</i> Action (Case No. CV 08-02348 JSW)	Crossclaim in <i>Methven</i> Interpleader Action (Case No. C 13-01079 JSW)
Paragraph 42	Paragraph 46
Portions of Paragraph 43	Portions of Paragraph 47
Portions of Paragraph 44	Portions of Paragraph 48
Portions of Paragraph 45	Portions of Paragraph 49
Portions of Paragraph 46	Portions of Paragraph 50
Paragraphs 49-54	Paragraphs 53-58
Paragraphs 56-59	Paragraphs 60-63
Paragraph 62	Paragraph 66
Portions of Paragraph 63	Portions of Paragraph 67
Paragraphs 68-69	Paragraphs 72-73
Paragraphs 72-73	Paragraphs 76-77
Paragraph 77	Paragraph 81
Paragraph 80	Paragraph 84
Exhibit A	Exhibit A

The material referenced above relates to the parties' settlement negotiations at a settlement conference before the Honorable Maria Elena-James, Magistrate Judge for the United States

1 District Court, Northern District of California on October 14, 2014. At the close of the
2 conference, the parties placed on the record the terms of a confidential settlement agreement. On
3 October 24, 2014, Magistrate Judge Elena-James ordered that the transcript of those proceedings
4 "be filed and maintained UNDER SEAL" and further ordered that only the parties' counsel of
5 record could have access to the transcript in both the *Brown v. Stroud* Action and *Methven*
6 Interpleader Action. (Dkt. Nos. 165; 646.)

7 The portions of Sony Music's counterclaim and crossclaim in the *Brown v. Stroud* Action
8 and crossclaim in the *Methven* Interpleader Action that Sony Music requests be sealed refer to the
9 confidential settlement reached on the record at the parties' October 14, 2014, which Magistrate
10 Judge Elena-James previously ordered sealed, and the transcript itself, which is attached as Exhibit
11 A to Sony Music's crossclaim. This information is "sealable" under Northern District Civil Local
12 Rule 79-5(b) because Magistrate Judge Elena-James has already ordered the transcript sealed, the
13 information relates to a confidential settlement agreement, some of the information is
14 competitively sensitive, and because Sony Music has carefully redacted only very specific
15 portions of its crossclaim that it believes to be sealable.

16 BACKGROUND

17 The above-captioned cases have been actively litigated for years. On October 14, 2014,
18 Sony Music, defendant and crossdefendant the Estate of Nina Simone by its duly authorized
19 administrator San Pasqual Fiduciary Trust (the "Simone Estate"), and defendant and
20 crossdefendant Steven Ames Brown ("Brown") participated in a settlement conference before the
21 Honorable Maria Elena-James, Magistrate Judge for the United States District Court, Northern
22 District of California in the hopes that the parties could resolve their portion of this long-
23 simmering dispute.

24 At the conclusion of the October 14, 2014 settlement conference, the parties entered into a
25 settlement agreement on the record, one provision of which was a stipulation that the terms of the
26 agreement be kept confidential. On October 23, 2014, Sony Music filed an administrative motion
27 to maintain the transcript of the parties' settlement conference under seal in both the *Brown v.*
28 *Stroud* Action and the *Methven* Interpleader Action. (Dkt. Nos. 164; 645.) On October 24,

Magistrate Judge Elena-James granted that motion and ordered the parties' settlement conference transcript sealed in both cases. (Dkt. Nos. 165; 646.)

ARGUMENT

A party seeking to seal documents associated with a dispositive motion must demonstrate "compelling reasons" to seal judicial records attached to a dispositive motion. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). However, in light of a weaker public interest in nondispositive materials, the "good cause" standard from Federal Rule of Civil Procedure 26(c) applies when parties wish to keep them under seal. *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010).

The Ninth Circuit has "not explicitly stated the standard – good cause or compelling reasons" that applies to a crossclaim, complaint, or counterclaim. *In re Google Inc. Gmail Litig.*, No. 13-MD-02430-LHK, 2013 WL 5366963, at *2 (N.D. Cal. Sept. 25, 2013) (referring to complaints). Examples of compelling reasons include "the use of court records for improper purposes," such as "to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets." *Kamakana*, 447 F.3d at 1179. "[S]ources of business information that might harm a litigant's competitive standing" may also give rise to a compelling reason to seal. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978).

Whichever standard is applicable, Sony Music's administrative motion to seal meets it for four reasons.

First, Magistrate Judge Elena-James has already ordered the transcript of the parties' settlement conference is sealable. The identified paragraphs in Sony Music's crossclaim reference specific portions of that transcript, and the sealed transcript itself is an exhibit to Sony Music's crossclaim. Publicly referencing and revealing the content of the sealed transcript potentially exposes Sony Music to civil contempt. *See, e.g., Travelers Prop. Cas. Co. of Am. v. Centex Homes*, No. 11-3638-SC, 2013 WL 3200607, at *2 (N.D. Cal. June 24, 2013) (considering and denying motion for civil contempt brought against party for allegedly violating court's sealing order). Moreover, courts generally do not disturb prior orders regarding sealed materials. *Kamakana*, 447 F.3d at 1179-1180 ("[W]hen a district court grants a protective order to seal

documents it already has determined that 'good cause' exists to protect this information from being disclosed to the public by balancing the needs for discovery against the need for confidentiality.") (internal quotations omitted).

Second, Magistrate Judge Elena-James's previous order was sound. In California, a strong public policy favors the settlement of lawsuits, and maintaining the confidentiality of settlement terms is recognized as a valuable tool in facilitating settlements. *Cho v. Superior Court*, 39 Cal. App. 4th 113, 124-25 (2d App Dist. 1995) (cited with approval by *County of Los Angeles v. U.S. Dist. Ct. (In re county of Los Angeles)*, 223 F.3d 990, 994 (9th Cir. 2000); *Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian*, 218 Cal. App. 3d 1058, 1076-1077 (6th App. Dist. 1990)). Magistrate Judge Elena-James properly concluded that this policy supported ordering the parties' settlement transcript sealed when she ordered the parties' transcript sealed on October 24, 2014 in both cases. (Dkt. Nos. 165; 646.)

Third, among the issues the parties discussed in the parties' settlement agreement was the way Sony Music's awards specific royalty rates. This is information that Sony Music takes pains to keep confidential and which, if revealed, could harm Sony Music's competitive standing. (Declaration of Gil Aronow at ¶¶ 5-7.) Likewise, information relating to the amounts of money in artist and producer accounts, are not only competitively sensitive, but also implicate artists' privacy as well. (Declaration of Gil Aronow at ¶ 5.) For that reason, this information likewise qualifies as sealable. *Louisiana Pac. Corp.*, 2013 WL 3483618 at *2; *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, No. 09-CV-01967 CW NC, 2013 WL 1997252, at *2 (N.D. Cal. May 13, 2013) (sealing document that was "marked confidential," and which "reveal[ed] the internal strategy and decision making process" where "disclosure could harm [the requesting party's] competitive standing"); *see also Nixon*, 435 U.S. at 598 (economic harm to litigant from revealing information sufficient to meet the "compelling reasons" standard).

Fourth, Sony Music has taken great pains to only redact that portion of the counterclaim and crossclaim in the *Brown v. Stroud* Action and crossclaim in the *Methven* Interpleader Action that it believes references the settlement transcript that Magistrate Judge Elena-James has already ordered sealed, and, of course, the sealed transcript itself (which is attached as an exhibit to both

1 Sony Music's counterclaim and crossclaim in the *Brown v. Stroud* Action and to its crossclaim in
 2 the *Methven* Interpleader Action). "[R]edactions have the virtue of being limited and clear."
 3 *Kamakana*, 447 F.3d at 1183. Here, Sony Music has narrowly redacted only that information
 4 which Magistrate Judge Elena-James has already concluded was sealable, no more.

5 CONCLUSION

6 For the foregoing reasons, Sony Music respectfully requests that the Court seal the
 7 foregoing portions of Sony Music's counterclaim and crossclaim in the *Brown v. Stroud* Action
 8 and Sony Music's crossclaim in the *Methven* Interpleader Action.

9 DATED: April 30, 2015

COBLENTZ PATCH DUFFY & BASS LLP

10 By: /s/ Julia D. Greer

11 Julia D. Greer

12 Attorneys for Defendant, Reply Counter-
 13 Defendant, and Crossclaimant SONY MUSIC
 14 ENTERTAINMENT, erroneously sued as SONY
 15 MUSIC HOLDINGS, INC.
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